

(b) *Filing the statement.* If possible, incorporate the statement of disagreement into the record. If that is not possible, the record should be annotated to reflect that the statement was filed and maintain the statement so that it can be obtained readily when the disputed information is used or disclosed. For instance, automated record systems not programmed to accept statements of disagreement must be capable of having indicators entered to reflect the presence of statements on file and how to obtain them.

(c) *Inform previous recipients.* Copies of the statement of disagreement should be furnished to all individuals listed in the disclosure accounting of the record (except those known to be no longer retaining the record), as well as to all other known holders of copies of the record.

(d) *Disclosure.* Whenever the disputed information is disclosed for any purpose, ensure that the statement of disagreement also is used or disclosed.

#### **§ 317.52 Agency's statement of reasons.**

(a) *Right to file.* If the individual files a statement of disagreement, the agency may file a statement of reasons containing a concise summary of the agency's reasons for denying the amendment request.

(b) *Content.* The statement of reasons shall contain only those reasons given to the individual by the appeal official and shall not contain any comments on the individual's statement of disagreement.

(c) *Disclosure.* At the discretion of the agency, the statement of reasons may be disclosed to those individuals, DoD components, and other Federal agencies that receive the statement of disagreement.

### **Subpart F—Disclosure of Records**

#### **§ 317.60 Conditions of disclosure.**

(a) *Disclosures to third persons.* (1) Under the Privacy Act, there are two terms describing how information from a record is provided:

(i) "Access" occurs when information from a record is provided or shown to the individual who is the subject of

record or, if that individual is a minor or incompetent, to the parent or legal guardian.

(ii) "Disclosure" occurs when information from a record is provided or shown to anyone other than the subject of record, or the parent or legal guardian of a minor or incompetent.

(b) *When disclosures may be made.* Disclosures may be made only when:

(1) The subject of record gives written consent for the disclosure; or

(2) One of the twelve conditions specified in § 317.61.

(c) *Validation before disclosure.* Except for disclosures made under the FOIA or DCAA Regulation 5410.10 (32 CFR part 290), make reasonable efforts to ensure the record is accurate, relevant, timely, and complete for agency purposes before disclosing any record from a system of records to any recipient other than a Federal agency. Records discovered to have been improperly filed in the system of records should be removed before disclosure.

(1) If validation cannot be obtained from the record itself, the agency may contact the subject of record (if reasonably available) to verify the accuracy, timeliness, completeness, and relevancy of the information.

(2) If validation cannot be obtained from the record and the subject of record is not reasonably available, the recipient should be advised that the information is believed to be valid as of a specific date and reveal any factors bearing on the validity of the information.

#### **§ 317.61 Non-consensual disclosures.**

The Privacy Act provides twelve instances when a record in a system of records may be disclosed without the written consent of the subject of the record:

(a) *Disclosures within the Department of Defense for official purposes.* For purposes of disclosing records among DoD components, the Department of Defense is considered a single agency; hence, a record may be disclosed to any officer or employee in the Department

of Defense who needs it in the performance of official duties. Rank or position alone does not authorize the disclosure; there must be a demonstrated official need.

(b) *Disclosures required by the Freedom of Information Act (FOIA).* (1) A record must be disclosed if required by the FOIA, which is implemented by DCAA Regulation 5410.10 (32 CFR part 290).

(2) The FOIA requires that records be made available to any person requesting them in writing, unless the record is exempt from disclosure under one of the nine FOIA exemptions. Therefore, if a record is not exempt from disclosure, it must be provided to the requester.

(3) Certain records, such as personnel, medical, and similar files, are exempt from disclosure under FOIA Exemption number 6. Under that exemption, disclosure of information pertaining to an individual can be denied only when the disclosure would be "a clearly unwarranted invasion of personal privacy."

(4) Records or information from investigatory records, including personnel security investigatory records, are exempt from disclosure under the broader standard of "an unwarranted invasion of personal privacy" found in FOIA Exemption number 7. This broader standard applies only to investigatory records.

(5) A disclosure under the FOIA about civilian employees must be in accordance with DCAA Regulation 5410.8<sup>10</sup>, but the following information normally may be disclosed from civilian employee records:

- (i) Full name.
- (ii) Present and past position titles and occupational series.
- (iii) Present and past grades.
- (iv) Present and past annual salary rates (including performance awards or bonuses, incentive awards, merit pay amount, Meritorious and Distinguished Executive Ranks, and allowances and differentials).
- (v) Past duty stations.
- (vi) Present duty station and future duty station (if finalized), including room numbers, shop designations, or other identifying information regard-

ing buildings or places of employment, unless the duty stations have been determined by the agency to be sensitive, routinely deployable, or located in a foreign territory.

(vii) Position descriptions, identification of job elements, and those performance standards (but not actual performance appraisals) that the disclosure of which would not interfere with law enforcement programs or severely inhibit agency effectiveness.

(6) Disclosure of home addresses and home telephone numbers:

(i) The disclosure under the FOIA of home addresses and telephone numbers normally is considered a clearly unwarranted invasion of personal privacy and is prohibited. However, they may be disclosed if:

(A) The individual has consented, in writing, to the disclosure.

(B) The disclosure is required by the FOIA; or

(C) The disclosure is required by another Federal law, such as 42 U.S.C. 653, which provides assistance to states in locating parents who have defaulted on child support payments.

(ii) When compiling home addresses and telephone numbers, the individual shall be offered the option of authorizing disclosure of the information without further consent for specific purposes, such as locator services. In that case, the information may be disclosed for the stated purpose without further consent. If the information is to be disclosed for any other purpose, a signed consent permitting the additional disclosure must be obtained from the individual.

(iii) Before listing home addresses and home telephone numbers in telephone directories, the individual should be given the opportunity to refuse such a listing. If the individual requests that the home address or telephone number not be listed in the directory, additional fees should not be assessed associated with maintaining an unlisted number for government-owned telephone services.

(iv) The sale or rental of lists of names and addresses is prohibited unless such action is specifically authorized by Federal law, but this does not prohibit the disclosure of names and addresses otherwise permitted to be

<sup>10</sup> See footnote 1 to § 317.1(a).

made public, such as by DCAA Regulation 5410.10 (32 CFR part 290).

(c) *Disclosures for established routine uses.* (1) Records may be disclosed outside the agency if the disclosure is for an established routine use.

(2) A routine use shall:

(i) Be compatible with and related to the purpose for which the record was created.

(ii) Identify the persons or organizations to whom the record may be disclosed.

(iii) Identify specifically the uses for which the information may be employed by the receiving person or organization; and

(iv) Be contained in the system of records notice published previously in the FEDERAL REGISTER.

(3) A routine use shall be established for each user of the information outside the agency who needs the information for an official purpose.

(4) Routine uses may be established, discontinued, or amended without the consent of the individuals to whom the records pertain. However, new and amended routine uses must be published in the FEDERAL REGISTER at least 30 days before the information may be disclosed under their provisions.

(5) In addition to the routine uses established by the system notices published in the FEDERAL REGISTER, certain common “blanket routine uses” have been established for all systems of records maintained by the agency. These blanket routine uses are published in the FEDERAL REGISTER at the beginning of the listing of system notices for the agency. Unless a system notice specifically excludes a system of records from a blanket routine use, all blanket routine uses apply to that system. See appendix A to this part.

(6) If the “routine user” recipient has not been identified in the FEDERAL REGISTER or if the recipient, though identified, intends to employ the information for a purpose not published in the FEDERAL REGISTER, the written consent of the individual is required before the disclosure can be made.

(d) *Disclosures to the Bureau of the Census.* Records may be disclosed to the Bureau of the Census for purposes of planning or carrying out a census or

survey or related activities under the provisions of 13 U.S.C. 8.

(e) *Disclosures for statistical research or reporting.* Records may be disclosed to a recipient for statistical research or reporting if:

(1) Prior to the disclosure, the recipient has provided adequate written assurance that the records shall be used solely for statistical research or reporting; and

(2) The records are transferred in a form that does not identify individuals.

(f) *Disclosures to the National Archives and Records Administration.* (1) Records may be disclosed to the National Archives and Records Administration for evaluation to determine whether the records have sufficient historical or other value to warrant preservation by the Federal government. If preservation is warranted, the records will be retained by the National Archives and Records Administration, which becomes the official owner of the records.

(2) Records may be disclosed to the National Archives and Records Administration to carry out records management inspections required by Federal law. Such disclosures are authorized by the National Archives and Records Act of 1984, Pub. L. 98–497.

(3) Records transferred to a Federal Records Center operated by the National Archives and Records Administration for storage are not within this category. Those records continue to be maintained and controlled by the agency. The Federal Records Center is considered the custodian agent of the agency.

(g) *Disclosures when requested for law enforcement purposes.* (1) A record may be disclosed to another agency or an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if:

(i) The civil or criminal law enforcement activity is authorized by law (Federal, State, or local); and

(ii) The head of the agency or instrumentality (or his or her designee) has made a written request to DCAA specifying the particular record or portion desired and the law enforcement activity for which it is sought.

(2) Blanket requests for any and all records pertaining to an individual

shall not be honored. The requesting agency or instrumentality must specify each record or portion desired and how each relates to the authorized law enforcement activity.

(3) This disclosure provision applies when the law enforcement agency or instrumentality requests the record. If DCAA discloses a record outside the Department of Defense for law enforcement purposes without the individual's consent and without an adequate written request, the disclosure must be pursuant to an established routine use, such as the blanket routine use for law enforcement.

(h) *Disclosures to protect the health or safety of an individual.* (1) Records may be disclosed by any means and to any person pursuant to a showing of compelling circumstances affecting the health or safety of an individual. The affected individual need not be the subject of the record.

(2) Notification of the disclosure (date and what, why, and to whom disclosed) must be sent to the subject of the record. Sending the notification to the last known address is sufficient.

(i) *Disclosures to Congress.* (1) A record may be disclosed to either House of Congress on the initiative of the agency or at the request of either the Senate or House of Representatives as a whole.

(2) A record also may be disclosed to any committee, subcommittee, or joint committee of Congress if the disclosure pertains to a matter within the legislative or investigative jurisdiction of the committee, subcommittee, or joint committee.

(3) Individual members of Congress not acting on behalf of the entire house, a committee, subcommittee, or joint committee have no greater right to have records disclosed to them than any other individual. However, for Members of Congress making inquiries on behalf of individuals who are subjects of records, a blanket routine use has been established to permit disclosures to individual members of Congress.

(i) When responding to a congressional inquiry made on behalf of a constituent by whose identifier the record is retrieved, there is no need to verify

that the individual has authorized the disclosure to the Member of Congress.

(ii) The oral statement of a congressional staff member is sufficient to establish that a request has been received from the individual to whom the record pertains.

(iii) If the constituent inquiry is made on behalf of an individual other than the subject of the record, provide the Member of Congress only that information releasable under the FOIA. The Member of Congress should be advised that the written consent of the subject of record is required before additional information may be disclosed. The subject of record should not be contacted to obtain consent for the disclosure to the Member of Congress unless the congressional office specifically requests that it be done.

(j) *Disclosures to the Comptroller General for the General Accounting Office.* Records may be disclosed to the Comptroller General, or his or her authorized representative, for the performance of the duties of the General Accounting Office.

(k) *Disclosures pursuant to court orders.* (1) Records may be disclosed pursuant to the order of a court of competent jurisdiction.

(2) The court order must bear the signature of a Federal, State, or local judge. Orders signed by court clerks or attorneys are not deemed to be orders of a court of competent jurisdiction. A photocopy of the order, regular on its face, will be sufficient evidence of the court's exercise of its authority if the minimal requirements of DCAA Regulation 5410.11, "Release of Official Information in Litigation and Testimony by DCAA Personnel as Witness."

(3) When a record is disclosed under this provision and the compulsory legal process becomes a matter of public record, make reasonable efforts to notify the subject of the record. Notification sent to the last known address of the individual is sufficient.

(l) *Disclosures to consumer reporting agencies.* (1) Certain information may be disclosed to consumer reporting agencies as defined by 31 U.S.C. 952d.

(2) Under these provisions, the following information may be disclosed to a consumer reporting agency:

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(i) Name, address, taxpayer identification number (SSN), and other information necessary to establish the identity of the individual.

(ii) The amount, status, and history of the claim; and

(iii) The agency or program under which the claim arose.

(3) 31 U.S.C. 952d specifically requires that the FEDERAL REGISTER notice for the system of records from which the information will be disclosed indicate that the information may be disclosed to a consumer reporting agency.

### **§ 317.62 Disclosures to commercial enterprises.**

(a) *General policy.* (1) Records may be disclosed to commercial enterprises only under the criteria established by the FOIA.

(2) The relationship of commercial enterprises to their customers or clients and to the agency is not changed by this part.

(3) The policy on personal indebtedness for civilian employees, is contained in DCAA Manual 1400.1, DCAA Personnel Management Manual.

(b) *Disclosure of information.* (1) Any information required to be disclosed by the FOIA may be disclosed to a requesting commercial enterprise.

(2) Commercial enterprises may present a concise statement signed by the individual indicating specific conditions for disclosing information from a record. Statements such as the following, if signed by the individual, are considered sufficient to authorize the disclosure:

I hereby authorize the Defense Contract Audit Agency to verify my Social Security Number or other identifying information and to disclose my home address and telephone number to authorized representatives of (name of commercial enterprise) to be used in connection with my commercial dealings with that enterprise. All information furnished will be used in connection with my financial relationship with (name of commercial enterprise).

(3) When a consent statement as described in the preceding paragraph is presented, the information should be provided to the commercial enterprise, unless the disclosure is prohibited by another regulation or Federal law.

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(4) Requests should not be honored from commercial enterprises for official evaluations or personal characteristics such as personal financial habits.

### **§ 317.63 Disclosing health care records to the public.**

This section applies to the disclosure of information to the news media and the public concerning individuals treated or hospitalized in DoD medical facilities and, when the cost of care is paid by the agency, in non-Federal facilities.

(a) *Disclosures without the individual's consent.* Normally, the following information may be disclosed without the individual's consent:

(1) Information required to be released by the FOIA, as well as the information listed for military personnel and for civilian employees; and

(2) The following general information concerning medical condition:

(i) Date of admission or disposition; and

(ii) Present medical assessment of the individual's condition in the following terms, if the medical practitioner has volunteered the information:

(A) The individual's condition presently is (stable) (good) (fair) (serious) (critical), and

(B) The patient is conscious, semiconscious, or unconscious.

(b) *Disclosures with the individual's consent.* With the individual's informed consent, any information about the individual may be disclosed. If the individual is a minor or has been declared incompetent by a court of competent jurisdiction, the parent or the appointed legal guardian may give consent on behalf of the individual.

(c) *Disclosures to other government agencies.* This section does not limit otherwise lawful disclosures to other government agencies for use in determining eligibility for special assistance or other benefits provided there is a published routine use permitting the disclosure.

### **§ 317.64 Accounting for disclosures.**

(a) *When to keep disclosure accountings.* An accurate record of all disclosures made from a record (including